

In Illinois, construction contractors are deemed to be the end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

July 27, 2001

Dear Xxxxx:

This letter is in response to your letter dated April 12, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

In order to continue in full compliance with the laws and regulations regarding sale and use tax within the State of Illinois, AAA respectfully requests a written response as to the determination of tangible personal property versus real property as it relates to one of our clients. A copy of the executed IL-2848 is enclosed. Our client owns and operates several self-serve and automatic car washes within the State of Illinois.

FACTS

There are several vendors, servicemen and contractors involved during the development of our client's car washes. The client, with the help of real estate agents locates and procures the land. One contractor readies the land for development while another builds the building, driveways and connects the utilities to the property. The client purchases the car wash equipment from another vendor. That same vendor installs the car wash equipment.

There are three main components to the type of car wash equipment purchased and maintained by our client. Those components are:

Water Softeners -- Per the installation and operations manual for this piece of equipment the, "installation of this unit must conform to local plumbing, electrical, and sanitation codes." The unit is bolted to the wall with concrete anchors and "hard-wired" to a disconnect or junction box. Electrical conduit is run from the unit to the breaker box along with the appropriate neutral and ground wire installation. A copy of the electrical system schematic, control enclosure electrical connections and electrical power connections is enclosed. See Exhibit A

Boilers -- There are two boilers in each car wash. One boiler heats the water for customer use while the second is used as a floor panel radiant heating system. The installation instructions specifically caution the installer to use a, "good grade of concrete with a minimum water content" and, "when pouring concrete, exercise caution to prevent damage to the polybutylene pipe." The boilers are "hard-wired" and to both the electrical and gas source. They are also vented through the roof of the building and bolted to the concrete floor. See Exhibit B and C The boilers are installed inside the equipment room of the facility; consequently, they must be vented through the roof and/or walls with the discharge opening at least two feet vertically from the roof surface and at least two feet higher than any part of the building within ten feet.

Automatic and Self-Serve Bay Equipment -- The automatic bay equipment consists of guide rails, tracks and braces all anchored to the building floor. In addition the equipment is "hard-wired" and "hard-plumbed" to the building's utility source. The self-serve bays equipment is less involved but it is "hard-wired" and "hard-plumbed". The installation requirements are detailed in the enclosed Exhibit D.

The equipment described above was purchased from and installed by the same vendor. Per In re Application of Beeler v. Marlin, 106 Ill. App. 3d 667, when something is welded or bolted to real estate as opposed to tacking or other temporary affixation, that item is considered real property. Letter ruling 93-0439 states, "walk-in refrigerators and coolers are permanently affixed to the real estate by being bolted or otherwise affixed...they are also wired into the building's electrical power source and connected to the freeze unit through a system of drain and water lines running through the building. Under the circumstances, we believe that the contractor is permanently affixing these items to real estate..." As you already know, there are many more letter rulings that have defined items anchored to the floors, walls or ceiling joists along with being "hard-wired or hard-plumbed" as being real property; consequently, per Section 130.1940 of the Illinois Administrative Code the vendor/installer would be a construction contractor and liable for sales/use tax on the cost of the equipment not my client.

If you have need for any additional information regarding the equipment or the client's circumstances please feel free to call me.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general

contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. Their customers owe a corresponding Use Tax liability on such purchases.

We are unable to provide specific guidance with the information you have provided. However, we can provide general information which we hope you find helpful. When the Department reviews such issues, it looks to the facts of the case to determine whether the property was intended to remain tangible personal property or become affixed as real estate. This inquiry is, of course, extremely fact dependent. By bolting items to a concrete floor or by hardwiring items to electrical and plumbing fixtures, a party is generally showing his or her intent that items be permanently affixed to real estate. However, the Department has examined similar facts and concluded differently based upon additional evidence that it was the intent of the purchaser that the whole system be replaced and traded in for a new system every 5 years.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.